



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1339/2
GMM:bjk:jf

DOA:.....Weidner, BB0336 - Prevailing wage contractor records

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under the current prevailing wage law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located, as determined by DWD, and may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, that is, no more than ten hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (overtime pay) for all hours worked in excess of the prevailing hours of labor. Currently, the prevailing wage law does not apply to a multiple-trade public works project whose estimated cost of completion is less than \$234,000 or to a single-trade public works project whose estimated cost of completion is less than \$48,000. DWD adjusts those amounts annually based on changes in construction costs.

This bill requires all laborers, workers, mechanics, and truck drivers working on the site of a publicly funded private construction project to be paid not less than the prevailing wage rate and to be paid overtime pay for all hours worked in excess of the prevailing hours of labor. The bill defines a "publicly funded private construction project" as a construction project, other than a project of public works, that receives financial assistance from a local governmental unit and "financial assistance" as any grant, cooperative agreement, loan, contract, or any other

arrangement by which a local governmental unit provides or otherwise makes available assistance in any of the following forms:

1. Funding.
2. A transfer or lease of real or personal property of the local governmental unit or of any interest in or permission to use that property for less than fair market value or for reduced consideration.
3. Proceeds from a subsequent transfer or lease of real or personal property transferred or leased from the local governmental unit, if the local governmental unit's share of the fair market value of the property is not returned to the local governmental unit.
4. A redevelopment contract, economic development agreement, industrial development revenue agreement, contract for the development or redevelopment of a tax incremental district or a blighted area, or assistance provided to develop, redevelopment, maintain, operate, or promote a business improvement district.

This bill sets the threshold for applicability of the prevailing wage law at an estimated cost of project completion of \$2,000, regardless of whether the project is a single-trade project or a multiple-trade project, and eliminates the authority of DWD to adjust that threshold.

Current law requires each contractor, subcontractor, and agent performing work on a project that is subject to the prevailing wage law to keep records indicating the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked. This bill requires a contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law to submit, on a weekly basis, a certified record of that information for the preceding week to the local governmental unit, state agency, or private owner or developer authorizing the work.

Current law requires DWD, if requested by any person, to inspect the payroll records of any contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law to ensure compliance with that law. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is a person performing work that is subject to that law, DWD must charge the person the actual cost of the inspection. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is not a person performing work that is subject to that law, DWD must charge the person \$250 or the actual cost of the inspection, whichever is greater. This bill requires DWD to charge a person making a request for the inspection of those payroll records only if DWD finds that the contractor, subcontractor, or agent is in compliance with that law and that the request is frivolous. In order to find that a request is frivolous, DWD must find that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, subcontractor, or agent, or that the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of the prevailing wage law had been committed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 19.36 (12) of the statutes is amended to read:

2 **19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES.** Unless access is
3 specifically authorized or required by statute, an authority shall not provide access
4 to a record prepared or provided by an employer performing work on a project to
5 which s. 66.0903, 66.0904, 103.49, or 103.50 applies, or on which the employer is
6 otherwise required to pay prevailing wages, if that record contains the name or other
7 personally identifiable information relating to an employee of that employer, unless
8 the employee authorizes the authority to provide access to that information. In this
9 subsection, "personally identifiable information" does not include an employee's
10 work classification, hours of work, or wage or benefit payments received for work on
11 such a project.

12 **SECTION 2.** 66.0903 (1) (e) of the statutes is repealed.

13 **SECTION 3.** 66.0903 (1) (i) of the statutes is repealed.

14 **SECTION 4.** 66.0903 (3) (av) of the statutes is amended to read:

15 **66.0903 (3) (av)** In determining prevailing wage rates under par. (am) or (ar),
16 the department may not use data from projects that are subject to this section, s.
17 66.0904, 103.49, or 103.50 or 40 USC 276a 3142 unless the department determines
18 that there is insufficient wage data in the area to determine those prevailing wage
19 rates, in which case the department may use data from projects that are subject to
20 this section, s. 66.0904, 103.49, or 103.50 or 40 USC 276a 3142.

21 **SECTION 5.** 66.0903 (5) of the statutes is amended to read:

1 66.0903 (5) NONAPPLICABILITY. This section does not apply to any single-trade
2 public works project, including a highway, street or bridge construction project, for
3 which the estimated project cost of completion is below \$30,000 or an amount
4 determined by the department under this subsection or to any multiple-trade public
5 works project, including a highway, street or bridge construction project, for which
6 the estimated project cost of completion is below \$150,000 or an amount determined
7 by the department under this subsection. The department shall adjust those dollar
8 amounts every year, the first adjustment to be made not sooner than
9 December 1, 1997. The adjustments shall be in proportion to any change in
10 construction costs since the effective date of the dollar amounts established under
11 this subsection \$2,000.

12 **SECTION 6.** 66.0903 (10) (a) of the statutes is amended to read:

13 66.0903 (10) (a) Each contractor, subcontractor, or contractor's or
14 subcontractor's agent performing work on a project that is subject to this section
15 shall keep full and accurate records clearly indicating the name and trade or
16 occupation of every person performing the work described in sub. (4) and an accurate
17 record of the number of hours worked by each of those persons and the actual wages
18 paid for the hours worked. By no later than the end of the week following a week in
19 which a contractor, subcontractor, or contractor's or subcontractor's agent performs
20 work on a project that is subject to this section, the contractor, subcontractor, or agent
21 shall submit to the contracting local governmental unit a certified record of the
22 information specified in the preceding sentence for that preceding week.

23 **SECTION 7.** 66.0903 (10) (c) of the statutes is amended to read:

24 66.0903 (10) (c) If requested by any person, the department shall inspect the
25 payroll records of any contractor, subcontractor, or agent performing work on a

1 project that is subject to this section to ensure compliance with this section. If In the
2 case of a request made by a person performing the work specified in sub. (4), if the
3 department finds that the contractor, subcontractor, or agent subject to the
4 inspection is found to be in compliance and if the person making the request is a
5 person performing the work specified in sub. (4) that the request is frivolous, the
6 department shall charge the person making the request the actual cost of the
7 inspection. If In the case of a request made by a person not performing the work
8 specified in sub. (4), if the department finds that the contractor, subcontractor, or
9 agent subject to the inspection is found to be in compliance and if the person making
10 the request is not a person performing the work specified in sub. (4) that the request
11 is frivolous, the department shall charge the person making the request \$250 or the
12 actual cost of the inspection, whichever is greater. In order to find that a request is
13 frivolous, the department must find that the person making the request made the
14 request in bad faith, solely for the purpose of harassing or maliciously injuring the
15 contractor, subcontractor, or agent subject to the inspection, or that the person
16 making the request knew, or should have known, that there was no reasonable basis
17 for believing that a violation of this section had been committed.

18 **SECTION 8.** 66.0903 (11) (b) 4. of the statutes is amended to read:

19 66.0903 (11) (b) 4. Whoever induces any person who seeks to be or is employed
20 on any project that is subject to this section to permit any part of the wages to which
21 the person is entitled under the contract governing the project to be deducted from
22 the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would
23 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
24 is subject to 40 USC 276e 3142.

25 **SECTION 9.** 66.0903 (11) (b) 5. of the statutes is amended to read:

1 66.0903 (11) (b) 5. Any person employed on a project that is subject to this
2 section who knowingly permits any part of the wages to which he or she is entitled
3 under the contract governing the project to be deducted from his or her pay is guilty
4 of an offense under s. 946.15 (4), unless the deduction would be permitted under 29
5 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
6 276e 3142.

7 **SECTION 10.** 66.0904 of the statutes is created to read:

8 **66.0904 Wage rates; publicly funded private construction projects. (1)**

9 DEFINITIONS. In this section:

10 (a) "Area" means the county in which a proposed publicly funded private
11 construction project that is subject to this section is located or, if the department
12 determines that there is insufficient wage data in that county, "area" means those
13 counties that are contiguous to that county or, if the department determines that
14 there is insufficient wage data in those counties, "area" means those counties that
15 are contiguous to those counties or, if the department determines that there is
16 insufficient wage data in those counties, "area" means the entire state or, if the
17 department is requested to review a determination under sub. (4) (e), "area" means
18 the city, village, or town in which a proposed publicly funded private construction
19 project that is subject to this section is located.

20 (b) "Department" means the department of workforce development.

21 (c) "Financial assistance" means any grant, cooperative agreement, loan,
22 contract, other than a public works contract, a supply procurement contract, a
23 contract of insurance or guaranty, or a collective bargaining agreement, or any other
24 arrangement by which a local governmental unit provides or otherwise makes
25 available assistance in any of the following forms:

1 1. Funding.

2 2. A transfer or lease of real or personal property of the local governmental unit
3 or of any interest in or permission to use, other than on a casual or transient basis,
4 that property for less than fair market value or for reduced consideration.

5 3. Proceeds from a subsequent transfer or lease of real or personal property
6 transferred or leased from the local governmental unit, if the local governmental
7 unit's share of the fair market value of the property is not returned to the local
8 governmental unit.

9 4. A redevelopment contract, economic development agreement, revenue
10 agreement under s. 66.1103, contract under s. 66.1105 (3) or 66.1333 (5), or
11 assistance provided under s. 66.1109.

12 (d) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

13 (e) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

14 (f) "Local governmental unit" has the meaning given in s. 66.0903 (1) (d).

15 (g) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

16 (h) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or
17 occupation engaged in the erection, construction, remodeling, repairing, or
18 demolition of any publicly funded private construction project in any area means the
19 hourly basic rate of pay, plus the hourly contribution for health insurance benefits,
20 vacation benefits, pension benefits, and any other bona fide economic benefit, paid
21 directly or indirectly, for a majority of the hours worked in the trade or occupation
22 on projects in the area.

23 2. If there is no rate at which a majority of the hours worked in the trade or
24 occupation on projects in the area is paid, "prevailing wage rate" for any trade or
25 occupation engaged in the erection, construction, remodeling, repairing, or

1 demolition of any publicly funded private construction project in any area means the
2 average hourly basic rate of pay, weighted by the number of hours worked, plus the
3 average hourly contribution, weighted by the number of hours worked, for health
4 insurance benefits, vacation benefits, pension benefits, and any other bona fide
5 economic benefit, paid directly or indirectly for all hours worked at the hourly basic
6 rate of pay of the highest-paid 51 percent of hours worked in that trade or occupation
7 on projects in that area.

8 (i) "Publicly funded private construction project" means a construction project,
9 other than a project of public works, that receives financial assistance from a local
10 governmental unit.

11 (j) "Truck driver" has the meaning given in s. 103.49 (1) (g).

12 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** (a) Any owner or developer of
13 real property who enters into a contract for the erection, construction, remodeling,
14 repairing, or demolition of any publicly funded private construction project on that
15 real property shall include in the contract a stipulation that no person performing
16 the work described in sub. (3) may be permitted to work a greater number of hours
17 per day or per week than the prevailing hours of labor, except that any such person
18 may be permitted or required to work more than the prevailing hours of labor per day
19 and per week if he or she is paid for all hours worked in excess of the prevailing hours
20 of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he
21 or she be paid less than the prevailing wage rate determined under sub. (4) in the
22 same or most similar trade or occupation in the area in which the publicly funded
23 private construction project is situated.

24 (b) A reference to the prevailing wage rates determined under sub. (4) and the
25 prevailing hours of labor shall be published in any notice issued for the purpose of

1 securing bids for the publicly funded private construction project. If any contract or
2 subcontract for a publicly funded private construction project that is subject to this
3 section is entered into, the prevailing wage rates determined under sub. (4) and the
4 prevailing hours of labor shall be physically incorporated into and made a part of the
5 contract or subcontract, except that for a minor subcontract, as determined by the
6 department, the department shall prescribe by rule the method of notifying the
7 minor subcontractor of the prevailing wage rates and prevailing hours of labor
8 applicable to the minor subcontract. The prevailing wage rates and prevailing hours
9 of labor applicable to a contract or subcontract may not be changed during the time
10 that the contract or subcontract is in force.

11 **(3) COVERED EMPLOYEES.** (a) Subject to par. (b), all of the following employes
12 shall be paid the prevailing wage rate determined under sub. (4) and may not be
13 permitted to work a greater number of hours per day or per week than the prevailing
14 hours of labor, unless they are paid for all hours worked in excess of the prevailing
15 hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

16 1. All laborers, workers, mechanics, and truck drivers employed on the site of
17 a publicly funded private construction project that is subject to this section.

18 2. All laborers, workers, mechanics, and truck drivers employed in the
19 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
20 of a publicly funded private construction project that is subject to this section or from
21 a facility dedicated exclusively, or nearly so, to a publicly funded private construction
22 project that is subject to this section by a contractor, subcontractor, agent, or other
23 person performing any work on the site of the project.

24 (b) Notwithstanding par. (a) 1., a laborer, worker, mechanic, or truck driver who
25 is regularly employed to process, manufacture, pick up, or deliver materials or

1 products from a commercial establishment that has a fixed place of business from
2 which the establishment regularly supplies processed or manufactured materials or
3 products is not entitled to receive the prevailing wage rate determined under sub.
4 (4) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
5 worked in excess of the prevailing hours of labor unless any of the following apply:

6 1. The laborer, worker, mechanic, or truck driver is employed to go to the source
7 of mineral aggregate such as sand, gravel, or stone that is to be immediately
8 incorporated into the work, and not stockpiled or further transported by truck, pick
9 up that mineral aggregate, and deliver that mineral aggregate to the site of a publicly
10 funded private construction project that is subject to this section by depositing the
11 material substantially in place, directly or through spreaders from the transporting
12 vehicle.

13 2. The laborer, worker, mechanic, or truck driver is employed to go to the site
14 of a publicly funded private construction project that is subject to this section, pick
15 up excavated material or spoil from the site of the project, and transport that
16 excavated material or spoil away from the site of the project.

17 (c) A truck driver who is an owner-operator of a truck shall be paid separately
18 for his or her work and for the use of his or her truck.

19 (4) INVESTIGATION; DETERMINATION. (a) Before the owner or developer of any
20 publicly funded private construction project enters into a contract or solicits bids on
21 a contract for the performance of any work to which this section applies, the owner
22 or developer shall apply to the department to determine the prevailing wage rate for
23 each trade or occupation required in the work under contemplation in the area in
24 which the work is to be done. The department shall conduct investigations and hold
25 public hearings as necessary to define the trades or occupations that are commonly

1 employed on publicly funded private construction projects that are subject to this
2 section and to inform itself as to the prevailing wage rates in all areas of the state
3 for those trades or occupations in order to determine the prevailing wage rate for
4 each trade or occupation. The department shall issue its determination within 30
5 days after receiving the request and shall file the determination with the owner or
6 developer applying for the determination and with the local governmental unit
7 providing financial assistance for the project. For the information of the employees
8 working on the project, the prevailing wage rates determined by the department, the
9 prevailing hours of labor, and the provisions of subs. (2) and (9) shall be kept posted
10 by the owner or developer in at least one conspicuous and easily accessible place on
11 the site of the project.

12 (b) The department shall, by January 1 of each year, compile the prevailing
13 wage rates for each trade or occupation in each area. The compilation shall, in
14 addition to the current prevailing wage rates, include future prevailing wage rates
15 when those prevailing wage rates can be determined for any trade or occupation in
16 any area and shall specify the effective date of those future prevailing wage rates.
17 If a publicly funded private construction project that is subject to this section extends
18 into more than one area there shall be but one standard of prevailing wage rates for
19 the entire private construction project.

20 (c) In determining prevailing wage rates under par. (a) or (b), the department
21 may not use data from projects that are subject to this section, s. 66.0903, 103.49, or
22 103.50 or 40 USC 3142 unless the department determines that there is insufficient
23 wage data in the area to determine those prevailing wage rates, in which case the
24 department may use data from projects that are subject to this section, s. 66.0903,
25 103.49, or 103.50 or 40 USC 3142.

1 (d) Any person may request a recalculation of any portion of an initial
2 determination within 30 days after the initial determination date if the person
3 submits evidence with the request showing that the prevailing wage rate for any
4 given trade or occupation included in the initial determination does not represent the
5 prevailing wage rate for that trade or occupation in the area. The evidence shall
6 include wage rate information reflecting work performed by persons working in the
7 contested trade or occupation in the area during the current survey period. The
8 department shall affirm or modify the initial determination within 15 days after the
9 date on which the department receives the request for recalculation.

10 (e) In addition to the recalculation under par. (d), the owner or developer that
11 requested the determination under this subsection may request a review of any
12 portion of the determination within 30 days after the date of issuance of the
13 determination if the owner or developer submits evidence with the request showing
14 that the prevailing wage rate for any given trade or occupation included in the
15 determination does not represent the prevailing wage rate for that trade or
16 occupation in the city, village, or town in which the proposed publicly funded private
17 construction project is located. That evidence shall include wage rate information
18 for the contested trade or occupation on at least 3 similar projects located in the city,
19 village, or town where the proposed publicly funded private construction project is
20 located on which some work has been performed during the current survey period
21 and which were considered by the department in issuing its most recent compilation
22 under par. (b). The department shall affirm or modify the determination within 15
23 days after the date on which the department receives the request for review.

1 (5) NONAPPLICABILITY. This section does not apply to any publicly funded
2 private construction project for which the estimated cost of completion is less than
3 \$2,000.

4 (6) EXEMPTIONS. The department, upon petition of any owner or developer
5 contracting for a publicly funded private construction project that is subject to this
6 section, shall issue an order exempting the owner or developer from applying to the
7 department for a determination under sub. (4) when it is shown that the project is
8 also subject to an ordinance or other enactment of a local governmental unit that sets
9 forth standards, policy, procedure, and practice resulting in standards as high or
10 higher than those under this section.

11 (7) COMPLIANCE. (a) When the department finds that an owner or developer
12 has not requested a determination under sub. (4) (a) or that an owner, developer,
13 contractor, or subcontractor has not physically incorporated a determination into a
14 contract or subcontract as required under sub. (2) (b) or has not notified a minor
15 subcontractor of a determination in the manner prescribed by the department by
16 rule promulgated under sub. (2) (b), the department shall notify the owner,
17 developer, contractor, or subcontractor of the noncompliance and shall file the
18 determination with the owner, developer, contractor, or subcontractor within 30 days
19 after the notice.

20 (b) Upon completion of a publicly funded private construction project that is
21 subject to this section and before receiving final payment for his or her work on the
22 private construction project, each agent or subcontractor shall furnish the contractor
23 with an affidavit stating that the agent or subcontractor has complied fully with the
24 requirements of this section. A contractor may not authorize final payment until the
25 affidavit is filed in proper form and order.

1 (c) Upon completion of a publicly funded private construction project that is
2 subject to this section and before receiving final payment for his or her work on the
3 project, each contractor shall file with the owner or developer contracting for the
4 work an affidavit stating that the contractor has complied fully with the
5 requirements of this section and that the contractor has received an affidavit under
6 par. (b) from each of the contractor's agents and subcontractors. An owner or
7 developer may not authorize a final payment until the affidavit is filed in proper form
8 and order. If an owner or developer authorizes a final payment before the affidavit
9 is filed in proper form and order or if the department determines, based on the
10 greater weight of the credible evidence, that any person performing the work
11 specified in sub. (3) has been or may have been paid less than the prevailing wage
12 rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess
13 of the prevailing hours of labor and requests that the owner or developer withhold
14 all or part of the final payment, but the owner or developer fails to do so, the owner
15 or developer is liable for all back wages payable up to the amount of the final
16 payment.

17 **(8) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each contractor, subcontractor, or
18 agent performing work on a publicly funded private construction project that is
19 subject to this section shall keep full and accurate records clearly indicating the
20 name and trade or occupation of every person performing the work described in sub.
21 (3) and an accurate record of the number of hours worked by each of those persons
22 and the actual wages paid for the hours worked. By no later than the end of the week
23 following a week in which a contractor, subcontractor, or contractor's or
24 subcontractor's agent performs work on a project that is subject to this section, the
25 contractor, subcontractor, or agent shall submit to the contracting owner or

1 developer a certified record of the information specified in the preceding sentence for
2 that preceding week.

3 (b) The department or the local governmental unit providing financial
4 assistance for a publicly funded private construction project may demand and
5 examine, and every contractor, subcontractor, and contractor's or subcontractor's
6 agent shall keep, and furnish upon request by the department or local governmental
7 unit, copies of payrolls and other records and information relating to the wages paid
8 to persons performing the work described in sub. (3) for work to which this section
9 applies. The department may inspect records in the manner provided in ch. 103.
10 Every contractor, subcontractor, or agent performing work on a publicly funded
11 private construction project that is subject to this section is subject to the
12 requirements of ch. 103 relating to the examination of records. Section 111.322 (2m)
13 applies to discharge and other discriminatory acts arising in connection with any
14 proceeding under this section.

15 (c) If requested by any person, the department shall inspect the payroll records
16 of any contractor, subcontractor, or contractor's or subcontractor's agent performing
17 work on a publicly funded private construction project that is subject to this section
18 to ensure compliance with this section. In the case of a request made by a person
19 performing the work specified in sub. (3), if the department finds that the contractor,
20 subcontractor, or agent subject to the inspection is in compliance and that the request
21 if frivolous, the department shall charge the person making the request the actual
22 cost of the inspection. In the case of a request made by a person not performing the
23 work specified in sub. (3), if the department finds that the contractor, subcontractor,
24 or agent subject to the inspection is in compliance and that the request is frivolous,
25 the department shall charge the person making the request \$250 or the actual cost

1 of the inspection, whichever is greater. In order to find that a request is frivolous,
2 the department must find that the person making the request made the request in
3 bad faith, solely for the purpose of harassing or maliciously injuring the contractor,
4 subcontractor, or agent subject to the inspection, or that the person making the
5 request knew, or should have known, that there was no reasonable basis for believing
6 that a violation of this section had been committed.

7 (d) Section 103.005 (5) (f), (11), (12), and (13) applies to this section, except that
8 s. 103.005 (12) (a) does not apply to any person who fails to provide any information
9 to the department to assist the department in determining prevailing wage rates
10 under sub. (4) (a) or (b). Section 111.322 (2m) applies to discharge and other
11 discriminatory acts arising in connection with any proceeding under this section,
12 including proceedings under sub. (9) (a).

13 **(9) LIABILITY AND PENALTIES.** (a) Any contractor, subcontractor, or contractor's
14 or subcontractor's agent who fails to pay the prevailing wage rate determined by the
15 department under sub. (4) or who pays less than 1.5 times the hourly basic rate of
16 pay for all hours worked in excess of the prevailing hours of labor is liable to any
17 affected employee in the amount of his or her unpaid wages or his or her unpaid
18 overtime compensation and in an additional equal amount as liquidated damages.
19 An action to recover the liability may be maintained in any court of competent
20 jurisdiction by any employee for and in behalf of that employee and other employees
21 similarly situated. No employee may be a party plaintiff to the action unless the
22 employee consents in writing to become a party and the consent is filed in the court
23 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in
24 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees
25 and costs to be paid by the defendant.

1 (b) 1. Except as provided in subds. 2., 4., and 6., any contractor, subcontractor,
2 or contractor's or subcontractor's agent who violates this section may be fined not
3 more than \$200 or imprisoned for not more than 6 months or both. Each day that
4 any violation continues is considered a separate offense.

5 2. Whoever induces any person who seeks to be or is employed on any publicly
6 funded private construction project that is subject to this section to give up, waive,
7 or return any part of the wages to which the person is entitled under the contract
8 governing the project, or who reduces the hourly basic rate of pay normally paid to
9 a person for work on a project that is not subject to this section during a week in which
10 the person works both on a project that is subject to this section and on a project that
11 is not subject to this section, by threat not to employ, by threat of dismissal from
12 employment, or by any other means is guilty of an offense under s. 946.15 (1).

13 3. Any person employed on a publicly funded private construction project that
14 is subject to this section who knowingly permits a contractor, subcontractor, or
15 contractor's or subcontractor's agent to pay him or her less than the prevailing wage
16 rate set forth in the contract governing the project, who gives up, waives, or returns
17 any part of the compensation to which he or she is entitled under the contract, or who
18 gives up, waives, or returns any part of the compensation to which he or she is
19 normally entitled for work on a project that is not subject to this section during a
20 week in which the person works both on a project that is subject to this section and
21 on a project that is not subject to this section, is guilty of an offense under s. 946.15
22 (2).

23 4. Whoever induces any person who seeks to be or is employed on any publicly
24 funded private construction project that is subject to this section to permit any part
25 of the wages to which the person is entitled under the contract governing the project

1 to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless
2 the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is
3 working on a project that is subject to 40 USC 3142.

4 5. Any person employed on a publicly funded private construction project that
5 is subject to this section who knowingly permits any part of the wages to which he
6 or she is entitled under the contract governing the project to be deducted from his or
7 her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be
8 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
9 subject to 40 USC 3142.

10 6. Subdivision 1. does not apply to any person who fails to provide any
11 information to the department to assist the department in determining prevailing
12 wage rates under sub. (4) (a) or (b).

13 **(10) DEPARTMENT.** (a) Except as provided under pars. (b) and (c), the department
14 shall notify any owner or developer applying for a determination under sub. (4) and
15 any owner or developer that is exempt under sub. (6) of the names of all persons
16 whom the department has found to have failed to pay the prevailing wage rate
17 determined under sub. (4) or has found to have paid less than 1.5 times the hourly
18 basic rate of pay for all hours worked in excess of the prevailing hours of labor at any
19 time in the preceding 3 years. The department shall include with each name the
20 address of the person and shall specify when the person failed to pay the prevailing
21 wage rate and when the person paid less than 1.5 times the hourly basic rate of pay
22 for all hours worked in excess of the prevailing hours of labor. An owner or developer
23 may not award any contract to the person unless otherwise recommended by the
24 department or unless 3 years have elapsed from the date on which the department

1 issued its findings or date of final determination by a court of competent jurisdiction,
2 whichever is later.

3 (b) The department may not include in a notification under par. (a) the name
4 of any person on the basis of having let work to a person whom the department has
5 found to have failed to pay the prevailing wage rate determined under sub. (4) or has
6 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
7 in excess of the prevailing hours of labor.

8 (c) This subsection does not apply to any contractor, subcontractor, or
9 contractor's or subcontractor's or agent that in good faith commits a minor violation
10 of this section, as determined on a case-by-case basis through administrative
11 hearings with all rights to due process afforded to all parties or that has not
12 exhausted or waived all appeals.

13 (d) Any person submitting a bid or negotiating a contract on a publicly funded
14 private construction project that is subject to this section shall, on the date on which
15 the person submits the bid, identify any construction business in which the person,
16 or a shareholder, officer, or partner of the person, if the person is a business, owns,
17 or has owned at least a 25 percent interest on the date the person submits the bid or
18 at any other time within 3 years preceding the date on which the person submits the
19 bid or negotiates the contract, if the business has been found to have failed to pay the
20 prevailing wage rate determined under sub. (4) or to have paid less than 1.5 times
21 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
22 labor.

23 (e) The department shall promulgate rules to administer this subsection.

24 **SECTION 11.** 103.49 (1) (bm) of the statutes is repealed.

25 **SECTION 12.** 103.49 (1) (e) of the statutes is repealed.

1 **SECTION 13.** 103.49 (3) (ar) of the statutes is amended to read:

2 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
3 department may not use data from projects that are subject to this section, s. 66.0903,
4 66.0904, 103.50, or 229.8275 or 40 USC 276a 3142 unless the department determines
5 that there is insufficient wage data in the area to determine those prevailing wage
6 rates, in which case the department may use data from projects that are subject to
7 this section, s. 66.0903, 66.0904, 103.50, or 229.8275 or 40 USC 276a 3142.

8 **SECTION 14.** 103.49 (3g) of the statutes is amended to read:

9 103.49 (3g) **NONAPPLICABILITY.** This section does not apply to any single-trade
10 public works project for which the estimated project cost of completion is less than
11 ~~\$30,000 or an amount determined by the department under s. 66.0903 (5) or to any~~
12 ~~multiple-trade public works project for which the estimated project cost of~~
13 ~~completion is less than \$150,000 or an amount determined by the department under~~
14 ~~s. 66.0903 (5) \$2,000.~~

15 **SECTION 15.** 103.49 (5) (a) of the statutes is amended to read:

16 103.49 (5) (a) Each contractor, subcontractor, or contractor's or subcontractor's
17 agent performing work on a project that is subject to this section shall keep full and
18 accurate records clearly indicating the name and trade or occupation of every person
19 performing the work described in sub. (2m) and an accurate record of the number of
20 hours worked by each of those persons and the actual wages paid for the hours
21 worked. By no later than the end of the week following a week in which a contractor,
22 subcontractor, or contractor's or subcontractor's agent performs work on a project
23 that is subject to this section, the contractor, subcontractor, or agent shall submit to
24 the state agency authorizing the work a certified record of the information specified
25 in the preceding sentence for that preceding week.

1 **SECTION 16.** 103.49 (5) (c) of the statutes is amended to read:

2 103.49 (5) (c) If requested by any person, the department shall inspect the
3 payroll records of any contractor, subcontractor, or agent performing work on a
4 project that is subject to this section to ensure compliance with this section. If In the
5 case of a request made by a person performing the work specified in sub. (2m), if the
6 department finds that the contractor, subcontractor, or agent subject to the
7 inspection is ~~found to be~~ in compliance and ~~if the person making the request is a~~
8 ~~person performing the work specified in sub. (2m)~~ that the request is frivolous, the
9 department shall charge the person making the request the actual cost of the
10 inspection. If In the case of a request made by a person not performing the work
11 specified in sub. (2m), if the department finds that the contractor, subcontractor, or
12 agent subject to the inspection is ~~found to be~~ in compliance and ~~if the person making~~
13 ~~the request is not a person performing the work specified in sub. (2m)~~ that the
14 request is frivolous, the department shall charge the person making the request \$250
15 or the actual cost of the inspection, whichever is greater. In order to find that a
16 request is frivolous, the department must find that the person making the request
17 made the request in bad faith, solely for the purpose of harassing or maliciously
18 injuring the contractor, subcontractor, or agent subject to the inspection, or that the
19 person making the request knew, or should have known, that there was no
20 reasonable basis for believing that a violation of this section had been committed.

21 **SECTION 17.** 103.49 (6m) (d) of the statutes is amended to read:

22 103.49 (6m) (d) Whoever induces any person who seeks to be or is employed
23 on any project that is subject to this section to permit any part of the wages to which
24 the person is entitled under the contract governing the project to be deducted from
25 the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would

1 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
2 is subject to 40 USC 276e 3142.

3 **SECTION 18.** 103.49 (6m) (e) of the statutes is amended to read:

4 103.49 **(6m)** (e) Any person employed on a project that is subject to this section
5 who knowingly permits any part of the wages to which he or she is entitled under the
6 contract governing the project to be deducted from his or her pay is guilty of an
7 offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR
8 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276e
9 3142.

10 **SECTION 19.** 103.50 (4m) of the statutes is amended to read:

11 103.50 **(4m)** WAGE RATE DATA. In determining prevailing wage rates for projects
12 that are subject to this section, the department shall use data from projects that are
13 subject to this section, s. 66.0903, 66.0904, or 103.49 or 40 USC 276a 3142.

14 **SECTION 20.** 103.50 (7) (d) of the statutes is amended to read:

15 103.50 **(7)** (d) Whoever induces any person who seeks to be or is employed on
16 any project that is subject to this section to permit any part of the wages to which the
17 person is entitled under the contract governing the project to be deducted from the
18 person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would
19 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
20 is subject to 40 USC 276e 3142.

21 **SECTION 21.** 103.50 (7) (e) of the statutes is amended to read:

22 103.50 **(7)** (e) Any person employed on a project that is subject to this section
23 who knowingly permits any part of the wages to which he or she is entitled under the
24 contract governing the project to be deducted from his or her pay is guilty of an
25 offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR

1 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276e
2 3142.

3 **SECTION 22.** 103.503 (title) of the statutes is amended to read:

4 **103.503 (title) Substance abuse prevention on public works and**
5 **publicly funded projects.**

6 **SECTION 23.** 103.503 (1) (a) of the statutes is amended to read:

7 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
8 otherwise involving an employee that resulted or could have resulted in death,
9 personal injury, or property damage and that occurred while the employee was
10 performing the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
11 project.

12 **SECTION 24.** 103.503 (1) (c) of the statutes is amended to read:

13 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
14 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), or an
15 owner or developer under s. 66.0904 that has contracted for the performance of work
16 on a project.

17 **SECTION 25.** 103.503 (1) (e) of the statutes is amended to read:

18 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
19 who performs the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
20 project.

21 **SECTION 26.** 103.503 (1) (g) of the statutes is amended to read:

22 103.503 (1) (g) "Project" mean a project of public works that is subject to s.
23 66.0903 or 103.49 or a publicly funded private construction project that is subject to
24 s. 66.0904.

25 **SECTION 27.** 103.503 (2) of the statutes is amended to read:

1 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
2 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
3 be under the influence of alcohol, while performing the work described in s. 66.0903
4 (4), 66.0904 (3), or 103.49 (2m) on a project. An employee is considered to be under
5 the influence of alcohol for purposes of this subsection if he or she has an alcohol
6 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
7 (d).

8 **SECTION 28.** 103.503 (3) (a) 2. of the statutes is amended to read:

9 103.503 (3) (a) 2. A requirement that employees performing the work described
10 in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a project submit to random,
11 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
12 alcohol testing before commencing work on a project, except that testing of an
13 employee before commencing work on a project is not required if the employee has
14 been participating in a random testing program during the 90 days preceding the
15 date on which the employee commenced work on the project.

16 **SECTION 29.** 104.001 (3) (am) of the statutes is created to read:

17 104.001 (3) (am) The requirement that employees employed on a publicly
18 funded private construction project for which a city, village, town, or county provides
19 financial assistance, as defined in s. 66.0904 (1) (c), be paid at the prevailing wage
20 rate, as defined in s. 66.0904 (1) (h), as required under s. 66.0904.

21 **SECTION 30.** 109.09 (1) of the statutes is amended to read:

22 109.09 (1) The department shall investigate and attempt equitably to adjust
23 controversies between employers and employees as to alleged wage claims. The
24 department may receive and investigate any wage claim which is filed with the
25 department, or received by the department under s. 109.10 (4), no later than 2 years

1 after the date the wages are due. The department may, after receiving a wage claim,
2 investigate any wages due from the employer against whom the claim is filed to any
3 employee during the period commencing 2 years before the date the claim is filed.
4 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
5 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
6 employer on behalf of the employee to collect any wage claim or wage deficiency and
7 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
8 under s. 109.10, the department may refer such an action to the district attorney of
9 the county in which the violation occurs for prosecution and collection and the
10 district attorney shall commence an action in the circuit court having appropriate
11 jurisdiction. Any number of wage claims or wage deficiencies against the same
12 employer may be joined in a single proceeding, but the court may order separate
13 trials or hearings. In actions that are referred to a district attorney under this
14 subsection, any taxable costs recovered by the district attorney shall be paid into the
15 general fund of the county in which the violation occurs and used by that county to
16 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
17 of the district attorney who prosecuted the action.

18 **SECTION 31.** 111.322 (2m) (c) of the statutes is amended to read:

19 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
20 under s. 66.0903, 66.0904, 103.49, or 229.8275 or testifies or assists in any action or
21 proceeding under s. 66.0903, 66.0904, 103.49, or 229.8275.

22 **SECTION 32.** 227.01 (13) (t) of the statutes is amended to read:

23 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
24 66.0903, 66.0904, 103.49, 103.50, and 229.8275, except that any action or inaction

1 which ascertains and determines prevailing wage rates under ss. 66.0903, 66.0904,
2 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

3 **SECTION 33.** 946.15 of the statutes is amended to read:

4 **946.15 Public and publicly funded construction contracts at less than**
5 **full rate. (1)** Any employer, or any agent or employee of an employer, who induces
6 any person who seeks to be or is employed pursuant to a public contract as defined
7 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
8 wage rate determination has been issued by the department of workforce
9 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3)
10 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
11 or 66.0904 (6) to give up, waive, or return any part of the compensation to which that
12 person is entitled under his or her contract of employment or under the prevailing
13 wage rate determination issued by the department or local governmental unit, or
14 who reduces the hourly basic rate of pay normally paid to an employee for work on
15 a project on which a prevailing wage rate determination has not been issued under
16 s. 66.0903 (3) or (6), 66.0904 (4) or (6), 103.49 (3), 103.50 (3), or 229.8275 (3) during
17 a week in which the employee works both on a project on which a prevailing wage
18 rate determination has been issued and on a project on which a prevailing wage rate
19 determination has not been issued, is guilty of a Class I felony.

20 **(2)** Any person employed pursuant to a public contract as defined in s. 66.0901
21 (1) (c) or employed on a project on which a prevailing wage rate determination has
22 been issued by the department of workforce development under s. 66.0903 (3),
23 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit,
24 as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) who gives up,
25 waives, or returns to the employer or agent of the employer any part of the

1 compensation to which the employee is entitled under his or her contract of
2 employment or under the prevailing wage determination issued by the department
3 or local governmental unit, or who gives up any part of the compensation to which
4 he or she is normally entitled for work on a project on which a prevailing wage rate
5 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4) or (6),
6 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the person works
7 part-time on a project on which a prevailing wage rate determination has been
8 issued and part-time on a project on which a prevailing wage rate determination has
9 not been issued, is guilty of a Class C misdemeanor.

10 (3) Any employer or labor organization, or any agent or employee of an
11 employer or labor organization, who induces any person who seeks to be or is
12 employed on a project on which a prevailing wage rate determination has been issued
13 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49
14 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903
15 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of the wages to which
16 that person is entitled under the prevailing wage rate determination issued by the
17 department or local governmental unit to be deducted from the person's pay is guilty
18 of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6
19 from a person who is working on a project that is subject to 40 USC 276e 3142.

20 (4) Any person employed on a project on which a prevailing wage rate
21 determination has been issued by the department of workforce development under
22 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local
23 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904
24 (6) who permits any part of the wages to which that person is entitled under the
25 prevailing wage rate determination issued by the department or local governmental

unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 276e 3142.

SECTION 9356. Initial applicability; Workforce Development.

(1) PREVAILING WAGES AND HOURS ON PRIVATE PROJECTS IN TAX INCREMENTAL DISTRICTS. The treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3) (ar), 103.50 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (am), 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 of the statutes first applies to contracts for the erection, construction, remodeling, repairing, or demolition of publicly funded private construction projects, as defined in section 66.0904 (1) (i) of the statutes, as created by this act, entered into, or extended, modified, or renewed, on the effective date of this subsection.

(2) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c) and 103.49 (5) (c) of the statutes first applies to requests for the inspection of payroll records made on the effective date of this subsection.

(3) PREVAILING WAGE RECORDS. The treatment of sections 66.0903 (10) (a) and 103.49 (5) (a) of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed.

SECTION 9456. Effective dates; Workforce Development.

1 (1) PREVAILING WAGE APPLICABILITY. The treatment of sections 66.0903 (1) (e) and
2 (i) and (5) and 103.49 (1) (bm) and (e) and (3g) of the statutes takes effect on January
3 1, 2010.

4 (END)